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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 572

PRUDENCE REALIZATION CORPORATION,
Petitioner,

v.

GEORGE E. EDDY, *et al.,*

REPLY BRIEF OF PRUDENCE REALIZATION CORPORATION, PETITIONER.

IRVING L. SCHANZER,
Counsel for Prudence Realization Corporation, Petitioner.

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Table of Cases.

	PAGE
Cf. Prudence Realization Corp. v. *Ferris*, 323 U. S. 650, 654	3
Kalb v. *Feuerstein*, 308 U. S. 433, 438, 439	4

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I.

Respondents Eddy and the White group alone oppose the granting of the petition.* They contend that the Plan could legally provide for the payment of the subordinated bonds only after the publicly held bonds were fully paid in accordance with their original tenor. The petition shows (Pet. 12-13) that while senior creditors ordinarily must be paid in full before junior creditors take anything, surrender by the publicly held bonds here of their lien upon the collateral for interest not earned by it is permitted by well-recognized corollaries of the rule.

* Respondents Reconstruction Finance Corporation, Prudence Bonds Corporation (New Company), the Trustee of the Debtor, and Reese, *et al.*, bondholders, request that the petition be granted so that the decision of the Court below, which adversely affects not only the petitioner but the owners of publicly held bonds of the other Series as well, may be reviewed by this Court.

Both the respondents Eddy (Eddy Brief, pp. 19, 24) and the White group (White, *et al.* Brief, pp. 9-10) seek to avoid the impact of the cases relied on by Petitioner by questioning the sufficiency of the consideration given here. But the record does not support either claim. Since only $1,252,760.45 of the claims of the Prudence Trustees were general claims (R. 250), there is no basis for the charge by respondent Eddy that the $9,000,000 of disputed claims withdrawn by petitioner's predecessors on the settlement by which subordination of the guarantor's bonds was accepted, had already been disposed of by the earlier elimination of general claims. Nor is there any basis for the claim by respondent Eddy that all the stock of the New Corporation given to bondholders by the Plan was worthless.

II.

Both the respondent Eddy and the White group also contend that the instant case does not come within the doctrine of the cases relied upon by Petitioner, for the alleged reason that the compromise by which the guarantor's bonds were subordinated was not predicated upon modification of the interest obligation. In so contending they overlook the fact that what was compromised was the question whether the guarantor's bonds were entitled to parity or were to be subordinated, and not the question of how these bonds were to be treated if they were adjudicated to be subordinate. Section 11 of the Plan provided for the manner of the guarantor's participation whatever the judicial determination of the question on subordination might be (R. 178, 179).

In the event of subordination, the bonds of the guarantor were not to receive any distribution on account of prin-

cipal until the publicly held bonds had been fully paid, redeemed, purchased or retired. The Plan and the Supplemental Trust Agreement are specific in their provisions for the payment, purchase and retirement of the bonds. It is apparent that the provisions of the Plan and the Supplemental Trust Agreement with respect to payment of principal in the event of a determination of subordination limited the principal payments on the subordinated bonds until the payment, purchase, redemption or retirement of the publicly held bonds as modified by the Plan and in accordance with the provisions of the Plan. That such treatment was not necessarily the treatment to which the subordinated bonds might be entitled as a matter of law is evidenced by the fact that the limitations of principal payments are made specific but only the rights to payment of interest are limited to those "to which they may be legally entitled" (R. 179).

Thus, in exchange for the considerations referred to in the petition, the Plan provided, in the event of subordination, for less than full payment of interest at the original rates borne by the bonds. The Plan left for judicial determination the question whether the securities held by the guarantor were to be subordinated or accorded parity of treatment with the publicly held bonds, but provided for the method of participation by the subordinated bonds in the event that they were held to be subordinate. (*Cf. Prudence Realization Corp.* v. *Ferris,* 323 U. S. 650, 654; Ibid., R. 120-122.) Accordingly, the compromise in this case was predicated upon the provisions of the Plan, which provided for only income interest on the bonds.

The opposing respondents, although ignoring the income interest provisions, now seek to take advantage of all the other provisions of the Plan such as those for the retirement through sinking fund operations of other bonds

at substantially below par, for if such bonds in substantial amounts had not in fact been retired under the provisions of the Plan, the funds presently available would be insufficient to pay the full amount of principal and interest to which the present respondents make claim.

III.

The briefs of both Eddy and the White group emphasize the necessity for a review by this Court of the disregard by the Court of Appeals of the well settled principles of *res judicata* referred to in the petition. The respondent Eddy claims that the order approving the Supplemental Trust Agreement cannot be accorded any greater degree of finality than if the Plan had provided that it should be approved by counsel (Eddy Brief, pp. 21-22), and that there would be a final adjudication within the rule of *res judicata* only after an adversary proceeding in which the rights of the parties under the Agreement were presented to the Court for determination. The contention of the respondent Eddy is in direct conflict with the cases referred to in the petition.

The White group contends that if the Supplemental Trust Agreement contained any changes from the Plan its approval by the Court was wholly void and subject to collateral attack. The violence which this contention does to the precedents of this Court as set forth on pages 13 and 14 of the petition, is brushed aside by respondent White by quotation from *Kalb* v. *Feuerstein,* 308 U. S. 433, 438, 439. In that case, however, this Court re-stated the established principle of *res judicata* and held that Congress could "by specific bankruptcy legislation create an exception to that principle" (*Kalb* v. *Feuerstein, supra,* at

pp. 438, 439). Neither the respondent nor a reading of the statute discloses the creation of such an exception for the present case.

Conclusion.

Wherefore, your petitioner prays that its petition for writ of certiorari be granted.

Respectfully submitted,

IRVING L. SCHANZER,
Counsel for Prudence Realization Corporation, Petitioner.

March 1948.